

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

JAMYL ARAOS COSTALES

Applicant for Registered Nurse License

Respondent

Case No. 2012 -622

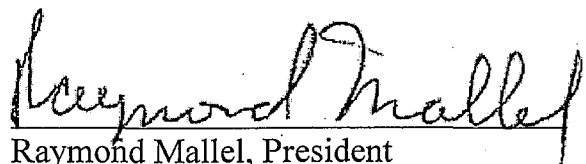
OAH No. 2012040641

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **November 30, 2012.**

IT IS SO ORDERED **October 31, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

13 JAMYL ARAOS COSTALES

14
15 Respondent.

Case No. 2012 622

OAH No. 2012040641

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Statement of Issues.

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
24 Board of Registered Nursing. She brought this action solely in her official capacity and is
25 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
26 Ron Espinoza, Deputy Attorney General.

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2. Jamyla Araos Costales (Respondent) is represented in this proceeding by attorney Steve Zeigen, Esq., whose address is: Rosenberg, Shpall, & Associates, APLC, 750 B Street, Suite 3210, San Diego, California, 92101.

3. On or about July 7, 2011, Respondent filed an application dated July 9, 2011, with the Board of Registered Nursing to obtain a registered nurse license.

JURISDICTION

4. Statement of Issues No. 2012 622 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on April 12, 2012. A copy of Statement of Issues No. 2012 622 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 2012 622. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 **IT IS HEREBY ORDERED** that the application of Respondent Jamyla Araos Costales for
9 licensure is hereby granted. Upon successful completion of the licensure examination and all
10 other licensing requirements, a registered nurse license shall be issued to Respondent. Said
11 license shall immediately be revoked, the order of revocation stayed and Respondent placed on
12 probation for a period of three (3) years on the following conditions:

13 **Severability Clause.** Each condition of probation contained herein is a separate and
14 distinct condition. If any condition of this Order, or any application thereof, is declared
15 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
16 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
17 and enforceable to the fullest extent permitted by law.

18 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
19 detailed account of any and all violations of law shall be reported by Respondent to the Board in
20 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
21 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
22 45 days of the effective date of the decision, unless previously submitted as part of the licensure
23 application process.

24 **Criminal Court Orders:** If Respondent is under criminal court orders, including
25 probation or parole, and the order is violated, this shall be deemed a violation of these probation
26 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

27 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
28 the conditions of the Probation Program established by the Board and cooperate with

1 representatives of the Board in its monitoring and investigation of the Respondent's compliance
2 with the Board's Probation Program. Respondent shall inform the Board in writing within no
3 more than 15 days of any address change and shall at all times maintain an active, current license
4 status with the Board, including during any period of suspension.

5 Upon successful completion of probation, Respondent's license shall be fully restored.

6 3. **Report in Person.** Respondent, during the period of probation, shall appear in
7 person at interviews/meetings as directed by the Board or its designated representatives.

8 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
9 practice as a registered nurse outside of California shall not apply toward a reduction of this
10 probation time period. Respondent's probation is tolled, if and when she resides outside of
11 California. Respondent must provide written notice to the Board within 15 days of any change of
12 residency or practice outside the state, and within 30 days prior to re-establishing residency or
13 returning to practice in this state.

14 Respondent shall provide a list of all states and territories where she has ever been licensed
15 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
16 information regarding the status of each license and any changes in such license status during the
17 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
18 license during the term of probation.

19 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
20 or cause to be submitted such written reports/declarations and verification of actions under
21 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
22 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
23 Respondent shall immediately execute all release of information forms as may be required by the
24 Board or its representatives.

25 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
26 state and territory in which she has a registered nurse license.

27 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
28 engage in the practice of registered nursing in California for a minimum of 24 hours per week for

1 6 consecutive months or as determined by the Board.

2 For purposes of compliance with the section, "engage in the practice of registered nursing"
3 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
4 non-direct patient care position that requires licensure as a registered nurse.

5 The Board may require that advanced practice nurses engage in advanced practice nursing
6 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

7 If Respondent has not complied with this condition during the probationary term, and
8 Respondent has presented sufficient documentation of her good faith efforts to comply with this
9 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
10 extension of Respondent's probation period up to one year without further hearing in order to
11 comply with this condition. During the one year extension, all original conditions of probation
12 shall apply.

13 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
14 prior approval from the Board before commencing or continuing any employment, paid or
15 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
16 performance evaluations and other employment related reports as a registered nurse upon request
17 of the Board.

18 Respondent shall provide a copy of this Decision to her employer and immediate
19 supervisors prior to commencement of any nursing or other health care related employment.

20 In addition to the above, Respondent shall notify the Board in writing within seventy-two
21 (72) hours after she obtains any nursing or other health care related employment. Respondent
22 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
23 separated, regardless of cause, from any nursing, or other health care related employment with a
24 full explanation of the circumstances surrounding the termination or separation.

25 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
26 Respondent's level of supervision and/or collaboration before commencing or continuing any
27 employment as a registered nurse, or education and training that includes patient care.

28 Respondent shall practice only under the direct supervision of a registered nurse in good

1 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
2 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
3 approved.

4 Respondent's level of supervision and/or collaboration may include, but is not limited to the
5 following:

6 (a) Maximum - The individual providing supervision and/or collaboration is present in
7 the patient care area or in any other work setting at all times.

8 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
9 care unit or in any other work setting at least half the hours Respondent works.

10 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
11 person communication with Respondent at least twice during each shift worked.

12 (d) Home Health Care - If Respondent is approved to work in the home health care
13 setting, the individual providing supervision and/or collaboration shall have person-to-person
14 communication with Respondent as required by the Board each work day. Respondent shall
15 maintain telephone or other telecommunication contact with the individual providing supervision
16 and/or collaboration as required by the Board during each work day. The individual providing
17 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
18 patients' homes visited by Respondent with or without Respondent present.

19 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
20 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
21 or for an in-house nursing pool.

22 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
23 registered nursing supervision and other protections for home visits have been approved by the
24 Board. Respondent shall not work in any other registered nursing occupation where home visits
25 are required.

26 Respondent shall not work in any health care setting as a supervisor of registered nurses.
27 The Board may additionally restrict Respondent from supervising licensed vocational nurses
28 and/or unlicensed assistive personnel on a case-by-case basis.

1 Respondent shall not work as a faculty member in an approved school of nursing or as an
2 instructor in a Board approved continuing education program.

3 Respondent shall work only on a regularly assigned, identified and predetermined
4 worksite(s) and shall not work in a float capacity.

5 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
6 request documentation to determine whether there should be restrictions on the hours of work.

7 **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
8 successfully complete a course(s) relevant to the practice of registered nursing no later than six
9 months prior to the end of her probationary term.

10 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
11 Respondent shall submit to the Board the original transcripts or certificates of completion for the
12 above required course(s). The Board shall return the original documents to Respondent after
13 photocopying them for its records.

14 **11. Violation of Probation.** If Respondent violates the conditions of her probation, the
15 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
16 and impose the stayed discipline (revocation) of Respondent's license.

17 If during the period of probation, an accusation or petition to revoke probation has been
18 filed against Respondent's license or the Attorney General's Office has been requested to prepare
19 an accusation or petition to revoke probation against Respondent's license, the probationary
20 period shall automatically be extended and shall not expire until the accusation or petition has
21 been acted upon by the Board.

22 **12. License Surrender.** During Respondent's term of probation, if she ceases practicing
23 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
24 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
25 Respondent's request and to exercise its discretion whether to grant the request, or to take any
26 other action deemed appropriate and reasonable under the circumstances, without further hearing.
27 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
28 subject to the conditions of probation.

1 Surrender of Respondent's license shall be considered a disciplinary action and shall
2 become a part of Respondent's license history with the Board. A registered nurse whose license
3 has been surrendered may petition the Board for reinstatement no sooner than the following
4 minimum periods from the effective date of the disciplinary decision:

5 (1) Two years for reinstatement of a license that was surrendered for any reason other
6 than a mental or physical illness; or

7 (2) One year for a license surrendered for a mental or physical illness.

8 13. **Physical Examination.** Within 45 days of the effective date of this Decision,
9 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
10 assistant, who is approved by the Board before the assessment is performed, submit an
11 assessment of the Respondent's physical condition and capability to perform the duties of a
12 registered nurse, including a determination as set forth below in the condition titled "Rule-Out
13 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to
14 the Board. If medically determined, a recommended treatment program will be instituted and
15 followed by the Respondent with the physician, nurse practitioner, or physician assistant
16 providing written reports to the Board on forms provided by the Board.

17 If Respondent is determined to be unable to practice safely as a registered nurse, the
18 licensed physician, nurse practitioner, or physician assistant making this determination shall
19 immediately notify the Board and Respondent by telephone, and the Board shall request that the
20 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
21 immediately cease practice and shall not resume practice until notified by the Board. During this
22 period of suspension, Respondent shall not engage in any practice for which a license issued by
23 the Board is required until the Board has notified Respondent that a medical determination
24 permits Respondent to resume practice. This period of suspension will not apply to the reduction
25 of this probationary time period.

26 If Respondent fails to have the above assessment submitted to the Board within the 45-day
27 requirement, Respondent shall immediately cease practice and shall not resume practice until
28 notified by the Board. This period of suspension will not apply to the reduction of this

1 probationary time period. The Board may waive or postpone this suspension only if significant,
2 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
3 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
4 Only one such waiver or extension may be permitted.

5 **14. Mental Health Examination.** Respondent shall, within 45 days of the effective date
6 of this Decision, have a mental health examination including psychological testing as appropriate
7 to determine her capability to perform the duties of a registered nurse, including a determination
8 as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." The
9 examination will be performed by a psychiatrist, psychologist or other licensed mental health
10 practitioner approved by the Board. The examining mental health practitioner will submit a
11 written report of that assessment and recommendations to the Board. All costs are the
12 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
13 result of the mental health examination will be instituted and followed by Respondent.

14 If Respondent is determined to be unable to practice safely as a registered nurse, the
15 licensed mental health care practitioner making this determination shall immediately notify the
16 Board and Respondent by telephone, and the Board shall request that the Attorney General's
17 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
18 practice and may not resume practice until notified by the Board. During this period of
19 suspension, Respondent shall not engage in any practice for which a license issued by the Board
20 is required, until the Board has notified Respondent that a mental health determination permits
21 Respondent to resume practice. This period of suspension will not apply to the reduction of this
22 probationary time period.

23 If Respondent fails to have the above assessment submitted to the Board within the 45-day
24 requirement, Respondent shall immediately cease practice and shall not resume practice until
25 notified by the Board. This period of suspension will not apply to the reduction of this
26 probationary time period. The Board may waive or postpone this suspension only if significant,
27 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
28 by Respondent to obtain the assessment, and a specific date for compliance must be provided.

1 Only one such waiver or extension may be permitted.

2 15. **Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical
3 and/or mental health examination determines that the Respondent is dependent upon drugs or
4 alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol
5 dependence in remission), that might reasonably affect the safe practice of nursing, then the
6 Respondent must further comply with the following additional terms and conditions of probation:

7 A. **Participate in Treatment/Rehabilitation Program for Chemical**

8 **Dependence.** Respondent, at her expense, shall successfully complete during the
9 probationary period or shall have successfully completed prior to commencement
10 of probation a Board-approved treatment/rehabilitation program of at least six
11 months duration. As required, reports shall be submitted by the program on forms
12 provided by the Board. If Respondent has not completed a Board-approved
13 treatment/rehabilitation program prior to commencement of probation,
14 Respondent, within 45 days from the effective date of the decision, shall be
15 enrolled in a program. If a program is not successfully completed within the first
16 nine months of probation, the Board shall consider Respondent in violation of
17 probation.

18 Based on Board recommendation, each week Respondent shall be required
19 to attend at least one, but no more than five 12-step recovery meetings or
20 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse
21 support group as approved and directed by the Board. If a nurse support group is
22 not available, an additional 12-step meeting or equivalent shall be added.
23 Respondent shall submit dated and signed documentation confirming such
24 attendance to the Board during the entire period of probation. Respondent shall
25 continue with the recovery plan recommended by the treatment/rehabilitation
26 program or a licensed mental health examiner and/or other ongoing recovery
27 groups.
28

1 **B. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
2 shall completely abstain from the possession, injection or consumption by any
3 route of all controlled substances and all psychotropic (mood altering) drugs,
4 including alcohol, except when the same are ordered by a health care professional
5 legally authorized to do so as part of documented medical treatment. Respondent
6 shall have sent to the Board, in writing and within fourteen (14) days, by the
7 prescribing health professional, a report identifying the medication, dosage, the
8 date the medication was prescribed, the Respondent's prognosis, the date the
9 medication will no longer be required, and the effect on the recovery plan, if
10 appropriate.

11 Respondent shall identify for the Board a single physician, nurse
12 practitioner or physician assistant who shall be aware of Respondent's history of
13 substance abuse and will coordinate and monitor any prescriptions for Respondent
14 for dangerous drugs, controlled substances or mood-altering drugs. The
15 coordinating physician, nurse practitioner, or physician assistant shall report to the
16 Board on a quarterly basis Respondent's compliance with this condition. If any
17 substances considered addictive have been prescribed, the report shall identify a
18 program for the time limited use of any such substances.

19 The Board may require the single coordinating physician, nurse
20 practitioner, or physician assistant to be a specialist in addictive medicine, or to
21 consult with a specialist in addictive medicine.

22 **C. Submit to Tests and Samples.** Respondent, at her expense, shall
23 participate in a random, biological fluid testing or a drug screening program which
24 the Board approves. The length of time and frequency will be subject to approval
25 by the Board. Respondent is responsible for keeping the Board informed of
26 Respondent's current telephone number at all times. Respondent shall also ensure
27 that messages may be left at the telephone number when she is not available and
28 ensure that reports are submitted directly by the testing agency to the Board, as

1 directed. Any confirmed positive finding shall be reported immediately to the
2 Board by the program and Respondent shall be considered in violation of
3 probation.

4 In addition, Respondent, at any time during the period of probation, shall
5 fully cooperate with the Board or any of its representatives, and shall, when
6 requested, submit to such tests and samples as the Board or its representatives may
7 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other
8 controlled substances.

9 If Respondent has a positive drug screen for any substance not legally
10 authorized and not reported to the coordinating physician, nurse practitioner, or
11 physician assistant, and the Board files a petition to revoke probation or an
12 accusation, the Board may suspend Respondent from practice pending the final
13 decision on the petition to revoke probation or the accusation. This period of
14 suspension will not apply to the reduction of this probationary time period.

15 If Respondent fails to participate in a random, biological fluid testing or
16 drug screening program within the specified time frame, Respondent shall
17 immediately cease practice and shall not resume practice until notified by the
18 Board. After taking into account documented evidence of mitigation, if the Board
19 files a petition to revoke probation or an accusation, the Board may suspend
20 Respondent from practice pending the final decision on the petition to revoke
21 probation or the accusation. This period of suspension will not apply to the
22 reduction of this probationary time period.

23 **D. Therapy or Counseling Program.** Respondent, at her expense, shall
24 participate in an on-going counseling program until such time as the Board
25 releases her from this requirement and only upon the recommendation of the
26 counselor. Written progress reports from the counselor will be required at various
27 intervals.

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JUN-07-2012 THU 11:59 AM DEPT. OF JUSTICE/ATTY GEN

FAX NO. 6196452883

P. 16

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Steve Zeigen, Esq. I understand the stipulation and the effect it will have on my application for and licensure as a registered nurse. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 6/15/12


JAMYLA ARAOS COSTALES
Respondent

I have read and fully discussed with Respondent Jamyla Araos Costales the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/15/12


STEVE ZEIGEN, ESQ.
Attorney for RespondentENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 6-16-12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

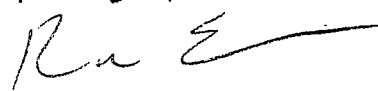

RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Statement of Issues No. 2012 622

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

13 JAMYLA ARAOS COSTALES

14
15 Respondent.

Case No. **2012-622**

STATEMENT OF ISSUES

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about July 7, 2011, the Board of Registered Nursing, Department of Consumer
23 Affairs, received an application for licensure as a registered nurse from Jamyla Araos Costales
24 (Respondent). On or about July 9, 2011, Jamyla Araos Costales certified under penalty of perjury
25 to the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on November 30, 2011. On or about December 19, 2011, Respondent
27 made a written request to the Board for a hearing on the denial of the application.

28 ///

JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board of Registered Nursing may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

". . .

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

". . ."

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to

1 himself or herself, any other person, or the public or to the extent that such use impairs his or her
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 "... "

4 7. Section 480 of the Code states:

5 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
6 one of the following:

7 "... "

8 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
9 would be grounds for suspension or revocation of license.

10 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
11 substantially related to the qualifications, functions, or duties of the business or profession for
12 which application is made.

13 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
14 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
15 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
16 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
17 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
18 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
19 Section 482.

20 "... "

21 8. Section 482 of the Code states:

22 "Each board under the provisions of this code shall develop criteria to evaluate the
23 rehabilitation of a person when:

24 "(a) Considering the denial of a license by the board under Section 480; or

25 "... "

26 "Each board shall take into account all competent evidence of rehabilitation furnished by
27 the applicant or licensee."

28 ///

1 9. Section 492 of the Code states:

2 “Notwithstanding any other provision of law, successful completion of any diversion
3 program under the Penal Code, or successful completion of an alcohol and drug problem
4 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of
5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
6 (commencing with Section 500) of this code, or any initiative act referred to in that division, from
7 taking disciplinary action against a licensee or from denying a license for professional
8 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
9 pertaining to an arrest.

10 “This section shall not be construed to apply to any drug diversion program operated by any
11 agency established under Division 2 (commencing with Section 500) of this code, or any
12 initiative act referred to in that division.”

13 REGULATORY PROVISIONS

14 10. California Code of Regulations, title 16, section 1444, states:

15 “A conviction or act shall be considered to be substantially related to the qualifications,
16 functions or duties of a registered nurse if to a substantial degree it evidences the present or
17 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
18 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

19 “(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
20 subdivision (d) of Penal Code Section 11160.

21 “(b) Failure to comply with any mandatory reporting requirements.

22 “(c) Theft, dishonesty, fraud, or deceit.

23 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
24 Penal Code.”

25 11. California Code of Regulations, title 16, section 1445, states:

26 “(a) When considering the denial of a license under Section 480 of the code, the board, in
27 evaluating the rehabilitation of the applicant and his/her present eligibility for a license will
28 consider the following criteria:

1 “(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for
2 denial.

3 “(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
4 consideration as grounds for denial which also could be considered as grounds for denial under
5 Section 480 of the code.

6 “(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in
7 subdivision (1) or (2).

8 “(4) The extent to which the applicant has complied with any terms of parole, probation,
9 restitution, or any other sanctions lawfully imposed against the applicant.

10 “(5) Evidence, if any, of rehabilitation submitted by the applicant.”

11
12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 **(Unprofessional Conduct- Unlawful Possession of Drug Paraphernalia)**

14 12. Respondent's application is subject to denial under Section 2761, subdivision (a), and
15 Section 480, subdivision (a)(3)(A), of the Code in that Respondent committed unprofessional
16 conduct by unlawfully possessing drug paraphernalia in violation of Health and Safety Code
17 section 11364. The circumstances are as follows:

18 a. On or about August 4, 2006, officers from the Escondido Police Department
19 conducted a traffic stop of a vehicle in which Respondent was a passenger. During a search of
20 Respondent's purse, one of the officers found a glass pipe for smoking drugs. The interior of the
21 glass pipe was coated with a white residue.

22 b. On or about October 11, 2006, in a criminal proceeding entitled *The People of*
23 *the State of California v. Jamyla A. Costales*, in San Diego County Superior Court, case number
24 CN215948, Respondent pled guilty to a violation of Health and Safety Code section 11364
25 (unlawful possession of paraphernalia for smoking controlled substance). On this same date, the
26 Court granted Respondent's application for deferred entry of judgment under Penal Code section
27 1000, et seq. Respondent was admitted into the Deferred Entry of Judgment Program on or about
28 November 8, 2006.

1 c. On or about May 9, 2008, the Court found that Respondent had completed the
2 Deferred Entry of Judgment Program and Respondent's previously entered plea was set aside and
3 the criminal charge dismissed.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Unprofessional Conduct- Unlawful Use of Controlled Substance)**

6 13. Respondent's application is subject to denial under Section 2761, subdivision (a),
7 Section 2762, subdivision (b), and Section 480, subdivision (a)(3)(A), of the Code in that
8 Respondent committed unprofessional conduct by unlawfully using a controlled substance as
9 defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.
10 Specifically, on or about July 7, 2011, Respondent admitted to the Board in a letter that she had
11 used methamphetamine.

12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

13 **(Unprofessional Conduct- Unlawful Possession of Controlled Substance)**

14 14. Respondent's application is subject to denial under Section 2761, subdivision (a),
15 Section 2762, subdivision (a), and Section 480, subdivision (a)(3)(A), of the Code in that
16 Respondent committed unprofessional conduct by possessing in violation of law a controlled
17 substance, methamphetamine, as alleged in paragraph 13 above, which is hereby incorporated by
18 reference.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board of Registered Nursing issue a decision:

- 22 1. Denying the application of Jamyla Araos Costales for a registered nurse license;
23 2. Taking such other and further action as deemed necessary and proper.

24
25 DATED: April 12, 2012

Stacie Ben

26 for LOUISE R. BAILEY, M.ED., RN
27 Interim Executive Officer
28 Board of Registered Nursing
Department of Consumer Affairs, State of California
Complainant